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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

Federal Communications Commission
Office of the Secretary

In re Applications of)	MM DOCKET NO. 92-111
DEAS COMMUNICATIONS, INC.)	File No. BPH-910208MB
HEALDSBURG BROADCASTING, INC.)	File No. BPH-910211MB
HEALDSBURG EMPIRE CORPORATION)	File No. BPH-910212MM
For Construction Permit for a)	
New FM Station on Channel 240A)	
in Healdsburg, California)	

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FILE

To: Administrative Law Judge
Edward J. Kuhlmann

OPPOSITION TO PETITION TO ENLARGE ISSUES

Deas Communications, Inc. ("Deas"), by its attorneys and pursuant to Sections 1.229 and 1.294 of the Commission's Rules, hereby opposes the further Petition to Enlarge Issues filed July 13, 1992 by Healdsburg Broadcasting, Inc. ("HBI")

1. HBI obviously hopes by its succession of fusillades that if it can sling enough mud at Deas, some may eventually stick.¹ But once again, its aim is off. The

¹ See Fox River Broadcasting Company, Inc., 88 FCC 2d 1132, 1139 n. 15 (Rev. Bd. 1982), modified, 93 FCC 2d 127 (1983) ("in comparative licensing proceedings where the applicants' qualifications are frequently fairly close, it is all but irresistible to stick the competition with a misrepresentation or lack of candor finding as a surefire way to secure the license. It is not surprising, therefore, that our comparative case law is littered with allegations of prevarication to the point where an unfamiliar reader would declare that our processing files are a collective rap sheet of the nation's pathological liars.")

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Petition, supported only by an inadmissible, unsworn letter,² unpersuasively elevates a disagreement on an ancillary matter into actionable misconduct.³

2. HBI finds in the letter from Mr. Richard, the president of a local citizens group, "a direct, unabashed contradiction" to a conclusory statement in the June 29, 1992 Declaration of Mario Edgar Deas, filed in opposition to HBI's first Petition. Because Mr. Richard disagrees that Deas' proposal has the Association's "tacit approval," something that Deas does not require,⁴ HBI asserts that a misrepresentation was made (see n. 1, supra).⁵

² The letter, by Charles Richard, current President of the Dry Creek Valley Association, was also proffered in HBI's Reply to its first enlargement Petition. That Petition was denied by Memorandum Opinion and Order, FCC 92M-782, released July 16, 1992, at para. 7.

³ Misrepresentation "involves false statements of fact," while lack of candor "involves concealment, evasion, and other failures to be fully informative." Fox River, at 93 FCC 2d 129. HBI fails to establish any false statements of fact by Deas and does not allege that Deas sought to conceal anything.

⁴ Recall from HBI's first Petition that it is the Sonoma County Board of Zoning Adjustments ("BZA") and not the Association which approves or disapproves such land uses. HBI has never offered acceptable evidence that the BZA will reject Deas' proposed site. Nor does Mr. Richard say that the Association will disapprove of it at the proper time.

⁵ In support of issue enlargement, HBI cites unspecifically to WCVQ, Inc., 5 FCC Rcd 3824 (1990); and Richardson Broadcast Group, 7 FCC Rcd 1583 (1992). The basis of its reliance on these cases is unclear since in neither was a character issue specified and WCVQ concerns an ALJ's refusal to allow rebuttal (Continued on following page...)

3. Since it does not comply with Rule 1.229(d) (specific allegations of fact must be supported by affidavits of persons with personal knowledge), HBI's Petition must be dismissed. Richardson Broadcast Group, n. 5, supra.

4. Because it selectively excludes facts⁶ and does not show that there was a false statement by Deas (much less a material misrepresentation), HBI's Petition must be rejected.

5. Here is what the controversy is about. Mr. Deas' June Declaration includes the following statement at 2:

(... continued from preceding page)
testimony on an applicant's integration pledge. Richardson does discuss an applicant's false hearing testimony on numerous subjects: her age, the duration of her local residence, the location of her voting residence, the involvement of her broadcaster children in her application, her knowledge of her husband's integration intentions, and whether she was retired. The Commission held that while these multiple discrepancies and evasions were not individually significant, they collectively required denial of her application. 7 FCC Rcd 1583-85, 1589 n. 6. HBI does not charge Deas with anything comparable.

But see Richardson at 1587 para. 22, where charges of misrepresentation and lack of candor were rejected as not properly supported by the sworn statements Rule 1.229 requires. On that ground, HBI's citation of Richardson is certainly apt.

⁶ For example, HBI never mentions that Mr. Richard was not the Association President at the time of the meeting, and that he was not even present at the meeting. See the new, annexed Declaration of Mario Edgar Deas. Further, HBI fails to point out that it is the BZA, not the Association, which will rule on Deas' proposal. Most importantly, HBI ignores Mr. Deas' June 1992 explanation for his belief in the Association's "tacit approval," though it is only three paragraphs above the conclusory language HBI finds so offensive.

I also met with the [Dry Creek Valley] Association in early 1991 at a public meeting and discussed my proposed tower with them. I showed them pictures of the site and there was no opposition to the proposal.

He therefore concludes, at 2, that the proposal "presently has the tacit approval of the Dry Creek Valley Association."⁷

6. Mr. Richard states as follows in his letter (emphasis added):

Finally, we wish to make it clear that although one of the applicants, Mr. Edgar Deas, appeared before our Board of Directors last year to explain his proposal, the Board did not approve that proposal or take any action on it, as no application had been submitted to the County. Rather, our Association's position remains as described above. Mr. Deas has stated to the FCC that he has the "tacit approval of the Dry Creek Valley Association". That statement is flatly wrong. New tower sites in rural areas should be denied.

Mr. Richard agrees with Mr. Deas except for the part about "tacit approval." HBI sees this solitary disagreement as deceptive (see n. 1, supra). However, differing viewpoints on matters of dubious materiality are not misrepresentations, notwithstanding a "traditional adversarial attempt to puff these matters into deliberate attempts to deceive." Kaye-Smith Enterprises, 98 FCC 2d 675, 56 RR 2d 252, 257 (Rev. Bd. 1984).

⁷ Mr. Deas states further in the conclusion that he expects his proposal will be granted by the BZA. Mr. Richard does not dispute this.

7. Mr. Deas' new July 23, 1992 Declaration reaffirms the truth and correctness of both his earlier sworn statements to the Commission.⁸ He also points out that Mr. Richard -- who was not the Association's President in 1991 and was not in attendance at the meeting in question -- supports the facts in the June Declaration except for the "tacit approval" part.

8. In the new Declaration, Mr. Deas elaborates on the basis for his earlier belief. The Association is known to be very aggressive and vocal when opposing projects. Mr. Deas has encountered no such opposition or hostility from the Association, and received not a single negative comment from anyone at the meeting.

9. Mr. Deas describes the 1991 meeting itself as follows (Declaration at 2):

The atmosphere was relaxed and very pleasant. There was no adverse reaction to any response I made. Edwin Wilson, then the Association President, indicated informally after the meeting that he, personally, did not foresee any problems with it. Other members seemed to echo his comment. Subsequently, and to the best of my knowledge, the Association has not ever taken a position against my proposal in any letter, news article, or elsewhere. This has obviously pleased me. Again, knowing how strongly the Association can react when it truly opposes a project, I considered the response that I have received, reasonably, I believe, as "tacit approval."

⁸ The Declaration is submitted in facsimile. The original is en route and, upon its receipt, will be filed as a supplement to this Opposition.

10. Mr. Deas' 1991 presentation was made in order to allay any Association concerns about his tower proposal. He will continue to maintain a dialogue with the Association and remains confident that when Mr. Richard is fully acquainted with the proposal, he will wholeheartedly approve of it. There is no reason to believe that the BZA, the governmental body charged with making such decisions, will not authorize Deas' use of the site in question. Declaration at 2-3.

11. Mr. Deas' comment about "tacit approval" is not a false statement, but a reasonable conclusion about the Association's position based on his personal experience and the indications given him by Association members. To the extent that Mr. Richard is aware of what went on in the 1991 meeting, he supports Mr. Deas' June Declaration recital. He may dispute Mr. Deas' conclusion that the Association has adopted a "tacit" position on the site proposal one way or the other, but Mr. Richard does not say that in the end, the Association will not support the proposal.

12. Disagreements about "tacit approval," especially given its lack of materiality (authority to approve tower sites is the BZA's, not the Association's), and where as here the declarant's beliefs were well-founded, are not misrepresentations. Kaye-Smith, 56 RR 2d at 257 (witness' incorrect recollection or equivocal statements are "much ado

about nothing"); Hampshire County Broadcasting Co., Inc., 99 FCC 2d 600, 57 RR 2d 463, 466 (Rev. Bd. 1984) ("no conscious effort at secreting" true facts despite adversary's unsupported claims); Baker Protective Services, Inc., 55 RR 2d 1584, 1589 (Rev. Bd. 1984) (opponent's attempts to puff minor reporting failures into reckless or deliberate attempts to deceive summarily rejected); accord, Millard Orick, 89 FCC 2d 571, 572-73 (Rev. Bd. 1982). Here, Edgar Deas told the truth in June as he reasonably understood it to be.

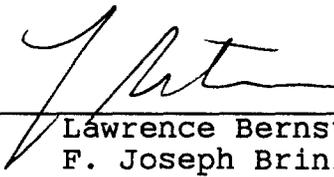
13. Mr. Deas was informally advised by Association members after his presentation that the proposal seemed to present no problem. A group well known for its aggressive opposition to projects has been conspicuously silent on Deas'. One can reasonably infer "tacit approval" from such responses and such inactions.

14. HBI's Petition indicates the existence of a good faith disagreement, not a misrepresentation or even a false statement by Deas. There is no basis for issue enlargement.

WHEREFORE, HBI's new Petition to Enlarge Issues
should be dismissed or denied.

Respectfully submitted

DEAS COMMUNICATIONS, INC.

By: 

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Its Attorneys

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Attachment

July 24, 1992

DECLARATION OF MARIO EDGAR DEAS

I, Mario Edgar Deas, declare under penalty of perjury that the following statement is true and correct.

I am the President, a Director and the sole voting shareholder of Deas Communications, Inc. ("Deas"), applicant for a new FM radio station at Healdsburg, California. I have already submitted sworn statements to the FCC dated June 29, 1992 and June 21, 1991. I affirm again, under oath, that both those statements are true and correct.

This Declaration is provided in response to yet another Petition to Enlarge Issues filed by Healdsburg Broadcasting, Inc. ("HBI"), this time accusing me of false testimony in the last paragraph of my June 29, 1992 Declaration, that "Deas presently has the tacit approval of the Dry Creek Valley Association" in connection with my proposed transmitter site. In charging me with deception based on this single conclusory statement, which accurately reflects the facts as I understand them, HBI ignores the rest of my Declaration, which explains the basis for my belief and which is confirmed by HBI's own "evidence."

This "evidence" consists of a July 9, 1992 letter from Charles Richard, the current Dry Creek Valley Association President. In fact, Mr. Richard fully corroborates my June 29 statement that "I also met with the Association in early 1991 at a public meeting and discussed my proposed tower with them. I showed them pictures of the site and there was no opposition to the proposal." Mr. Richard agrees and says that "Mr. Edgar Deas appeared before our Board of Directors last year to explain his proposal, (but) the Board did not approve that proposal or take any action on it, as no application had been submitted to the County."

Although he was not the Association's President at the time of that meeting, nor even present at the meeting, Mr. Richard disputes my belief about the Association's "tacit approval." Based solely on this letter from someone not there at the time, HBI accuses me of deceit.

Let me explain why I said what I did. Anyone familiar with the Association knows how aggressive and vocal its members can be when they oppose something. I have encountered no such response. At the 1991 meeting referred to above, during my presentation and afterwards, I encountered no hostility and received no negative comments from anyone present. The atmosphere was relaxed and very pleasant. There was no adverse reaction to any response I made. Edwin Wilson, then the Association President, indicated informally after the meeting that he, personally, did not foresee any problems with it. Other members seemed to echo his comment. Subsequently, and to the best of my knowledge, the Association has not ever taken a position against my proposal in any letter, news article, or elsewhere. This has obviously pleased me. Again, knowing how strongly the Association can react when it truly opposes a project, I considered the response that I have received, reasonably, I believe, as "tacit approval."

Mr. Richard suggests that my proposed site is located in a "rural area". The city of Healdsburg has a small population of approximately 9,750 and is surrounded by agricultural lands, vineyards, wooded hills, and is indeed a rural area. Within the parameters specified by the FCC, I believe that all of the available antenna sites are in rural areas. Mr. Richard acknowledges that at the meeting the Board took no action adverse to the tower location. I was not seeking Board action, but simply wanted to acquaint the members with what I intend to do, in order to allay any environmental concerns they might have. I succeeded in that regard and have no doubt that at the appropriate time, after grant and when an application is filed with the County Board of Zoning Adjustments (the body that actually makes such decisions), the Association will again recognize that Deas' proposal offers optimum FM coverage of Healdsburg with no adverse environmental, visual or ecological impact, and will "un-tacitly" approve it. I will continue to keep an open dialog with the Association and I believe that reasonable people will see the benefit of this station to our community and agree that its benefit outweighs the insignificant effect on the environment.

In conclusion, HBI does not dispute that I met with the Association's Board in early 1991, that I made a pictorial presentation and that "there was no opposition to the proposal." Mr. Richard confirms all this. My belief that

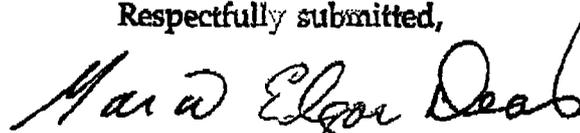
the proposal "presently has the tacit approval of the Dry Creek Valley Association" is based on the affirmative responses I received after the meeting. Mr. Richard was not there, and may be unaware of this.

I am fully confident that when he is acquainted with the merits of our proposal, Mr. Richard, too, will wholeheartedly approve of it.

For these reasons, HBI's allegation that I have attempted to deceive the FCC should be rejected.

Executed this 23 day of July, 1992.

Respectfully submitted,



Mario Edgar Das

Mario Edgar Das

CERTIFICATE OF SERVICE

I hereby certify that I have, this 24th day of July, 1992, served copies of the foregoing "Opposition to Petition to Enlarge Issues" upon the following persons by first class United States Mail, postage prepaid:

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